



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA MAY 6, 2010

Tom Baker Meeting Room

4:00 p.m.

City-County Office Building

MINUTES

1. **Minutes.** Consider approval of the minutes of the April 1, 2010 meeting.

REQUESTS

2. **8200 Arcata Drive** (Christopher and Roberta Hambrick) Request for a variance to exceed the allowable lot area for the purpose of constructing an additional accessory building at the above-mentioned property.

ADJOURNMENT

3. **Adjourn.** The next regular meeting date is scheduled for June 3, 2010.

Bismarck-Burleigh County Community Development Department

221 North 5th Street • PO Box 5503 • Bismarck, ND 58506-5503 • TDD: 711 • www.bismarck.org

Building Inspections Division • Phone: 701-355-1465 • Fax: 701-258-2073 Planning Division • Phone: 701-355-1840 • Fax: 701-222-6450

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
APRIL 1, 2010**

The Bismarck Board of Adjustment met on April 1, 2010 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Chair Michael Marback, Blair Ihmels, Warren Tvenge, Jennifer Clark, and Ken Heier.

Staff members present were Ray Ziegler (Building Official), Gregg Greenquist (Planner), and Kim Riepl (Office Assistant).

Others present were Gary Marchus, 9321 Plainview, Bismarck; Jerry Doan, 711 E. Sweet Avenue, Bismarck; Dave Barth, 311 S. 7th Street, Bismarck; and Dave Tschider, 418 E. Rosser Avenue, Bismarck.

MINUTES

Chair Marback asked for consideration of the October 29, 2009 minutes. Ms. Clark asked for an explanation of the secretary's note on the October 29, 2009 minutes. It was explained a quorum (four of six members) is required to assemble. In order to approve a variance, four concurring votes for approval must be cast. A variance may be denied by majority vote.

MOTION: A motion was made by Ms. Clark and seconded by Mr. Tvenge to approve the minutes of the October 29, 2009 meeting as presented. With all members voting in favor, the minutes were approved.

VARIANCE – GARY MARCHUS – 701 E. SWEET AVENUE

Mr. Marchus requested a variance to obtain a building permit for a nonconforming, undersized lot. Chair Marback read the applicant's reason for request which stated: "Applicant wishes to install a billboard on a nonconforming, undersized lot. In the CG Zoning District, the minimum required lot area is 5,000 square feet. The subject lot is 3,330 square feet. The minimum width for lots in the CG District is 50-feet. The subject lot is 37-feet. Because this is an undersized lot, a building permit cannot be issued without approval of a variance. A billboard is a permitted use in the CG Zoning District and would be in compliance with the zoning of this property". Mr. Marback asked if there was anything to be added.

Mr. Marchus stated that the question before the Board was not one of whether a billboard was a permitted use for the lot, as it is zoned CG and billboards are permitted in CG zoning, but rather, if consent would be given to issuing a building permit for an undersized lot, as the size of the lot is what makes it nonconforming.

Mr. Heier inquired as to the specific location of the proposed billboard and Mr. Marchus replied directly west of the building currently there; also that it would be 6-feet by 8-feet in size.

Ms. Clark asked if the current building on the property was a rental and if the billboard would advertise for a business on the premises or otherwise. Mr. Marchus affirmed it was a rental, and that advertising would be for other businesses or perhaps his own needs.

Dave Tschider, representing Dave Barth who owns the business directly to the south of the applicant's property, encouraged the Board to deny the request, citing the following:

- 1.) According to City Ordinance, a 50-foot lot is required to build on that lot, but this lot is 37-feet, approximately 26% below the required width, not only a foot or two.
- 2.) The property is currently being used as a residence. The sign is not related to the residence or a residential purpose; that the sign would be a commercial purpose and this request essentially changes the use of the property from a residential use to a commercial use.
- 3.) Concern that on the application there are no size restrictions for the size of the proposed billboard and there may be a precedent set for commercial billboard companies to request variances to build large signs in areas zoned, but not suitable for them.
- 4.) Safety issues exist on this hillside and motorists do not need additional distractions here.
- 5.) Concern that approval of this request would provide an open variance to do anything the applicant wishes on the property.
- 6.) Zoning laws and variance guidelines are in place to provide community benefit, but the purpose of this application is self-serving.

Mr. Tvenge noted the Board of Adjustment was allowed to grant approval of a variance based on hardship.

Jerry Doan, owner of Snooper's Tons of Fun, Giovanni's Pizza, and the strip mall south of the applicant's property, stated he was in concurrence with many of the issues raised by Mr. Tschider. Mr. Doan is concerned with the fact that the property has a residence on it that probably shouldn't be a residence, but now Mr. Marchus wants to put the property to commercial use as well. He also agreed there is a safety factor involved because of the traffic speeds and the hill, coupled with a lot of pedestrian traffic crossing 7th Street.

Dave Barth, who owns the tire store at the bottom of the hill (south of the applicant's property), agreed to the safety issues previously cited.

Mr. Marchus reiterated that because the zoning allows billboards, the fact that the lot is nonconforming becomes the focus of the variance request. In response to the safety issues, Mr. Marchus noted that one of the busiest intersections in town is located one block to the north of his property and that there are signs in that area. As far as traffic accidents, these are accidents that have already happened and the causes have not been made known, but are probably not due to signs. Regarding the statement made that he is just trying to make more money, he responded by saying he is no different from Mr. Barth who also has a sign. Mr. Marchus added he is just trying to utilize the property that he has.

Ms. Clark asked how long Mr. Marchus has owned the property and he replied since 1986.

Mr. Heier asked what the specific hardship was in this application, noting there are setback requirements for a residential use already not being met with the existing building on the property. For instance, if the variance was to add a deck onto the house, setbacks would not be adequate and would not meet the requirements. Mr. Marchus replied that the sign, 6-feet x 8-feet in size, will be on a six-inch pole, ten-feet off the ground and there will be little interference.

Ms. Clark asked if zoning ordinance requirements have changed, becoming more stringent, since 1986? Mr. Ziegler stated he would have to check on that. Mr. Greenquist added that zoning ordinances are always being updated, but changes occur to properties as well. The property in question appears to be a combination of lots, as in the early days, lots tended to be much smaller.

Mr. Ihmels asked for a definition of the CG-Commercial District. Mr. Greenquist read from the ordinance: "...The CG commercial district is a heavy commercial area located outside the central business district to provide commerce and service to the City of Bismarck and surrounding regional market. The CG commercial district is established to promote the general purpose of this article, the specific intent of this section is:

To encourage the continued expansion of the commercial facilities within the city without creating increased vehicular congestion in the existing central business district;

To provide an orderly and comprehensive expansion of commercial services within the city;

To prevent commercial encroachment on existing residential districts;

To encourage the development of a conveniently arranged district offering a broad range of commercial and professional services in a relaxed atmosphere and in an area where adequate off-street parking will be provided." Mr. Greenquist then stated that item #7 in Service Group B, an outdoor advertising sign, billboard, is a permitted use in this district.

Mr. Heier asked Mr. Ziegler what the classification of this sign would be to which Mr. Ziegler replied it would likely be classed as a billboard sign, for which there are maximum size limitations but no minimum size requirements. He added that under the Uniform Sign Code, the sign would have to meet all legal setbacks, in this case, 15-feet.

Mr. Ihmels commented that if the variance were approved, there would still be other requirements Mr. Marchus would have to meet in order to obtain a building permit for the sign. Mr. Ziegler said that was correct.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CG zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Tvenge to deny the request for a variance to obtain a building permit for a nonconforming, undersized lot based on a lack of hardship. Mr. Heier seconded the motion and with all members voting to deny, the motion to deny the request was approved.

OTHER BUSINESS

Mr. Greenquist announced that the three-year terms of service for both Warren Tvenge and Larry Thompson expire with this meeting, and it is the wishes of both to retire their positions. New applicants will be sought.

ADJOURNMENT

There being no further business, the meeting of the Bismarck Board of Adjustment was adjourned to meet again on May 6, 2010.

Respectfully Submitted,

Kim Riepl
Recording Secretary

APPROVED:

Michael Marback, Chair

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

BACKGROUND:	
Title: 8200 Arcata Drive –Variance to construct a larger-than-allowed accessory building (Lot A of the NE ¼ of Section 2, T139N, R80W)	
Status: Board of Adjustment	Date: May 6, 2010
Owner(s): Chris and Rebecca Hambrick	
Reason for Request: The applicants wish to construct a detached garage that would be larger than allowed by the ordinance. The proposed 30' x 40' building is 1200 square feet. An existing accessory building is 1680 square feet. The maximum accessory building area for this 5-acre lot is 2178 square feet. The combined coverage of both buildings is 2880 square feet (702 square feet over the limit).	
Location: Northeast of Bismarck on the south side of 84 th Ave. NE between 26 th St. and 41 st St. NE. From the intersection of Hwy 83 and 71 st Ave, go 1 mile east, 1 mile north, and ¾ mile east.	
Applicable Provision(s) of Zoning Ordinance: Section 14-04-01(10) "All allowable accessory buildings to a residence shall be limited to . . . a maximum of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet for lots larger than four (4) acres. (<i>This lot is 5-acres. $5 \times 43560 = 217800 \times .01 = 2178 \text{ sq. ft.}$</i>)	
FINDINGS:	
<ol style="list-style-type: none">1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR zoning classification.2. The hardship is not caused by the provisions of the Zoning Ordinance.3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.	
RECOMMENDATION:	
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board. If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.	



Community Development Department

MEMO

DATE: April 30, 2010
TO: Board of Adjustment
FROM: Gregg Greenquist
RE: Supplemental information for March 6th meeting

The purpose of this memo is to provide you with additional information on Hambrick's variance request and additional information on the upcoming meeting.

Hambrick's lot is currently zoned A-Agricultural. At 5-acres, it is nonconforming because the minimum lot size in the Agricultural Zoning District is 40-acres. If the Board should vote to approve this variance, Hambricks have indicated they would apply for a rezoning to RR-Residential. This lot would be in conformance with RR zoning. If the Board votes to approve this variance, the approval could include the condition that a building permit would not be issued until a rezoning to RR is approved.

Hambrick's lot is not platted but they would qualify for the following exemption as established by Section 14-05-07. Requirement for Building Permit:

A building permit may be issued for a new accessory building on a parcel of record with an existing single-family principal building, provided: 1) the parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located; 2) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty feet wide; and 3) the parcel of record is an auditor's lot or aliquot description rather than a metes and bounds description.

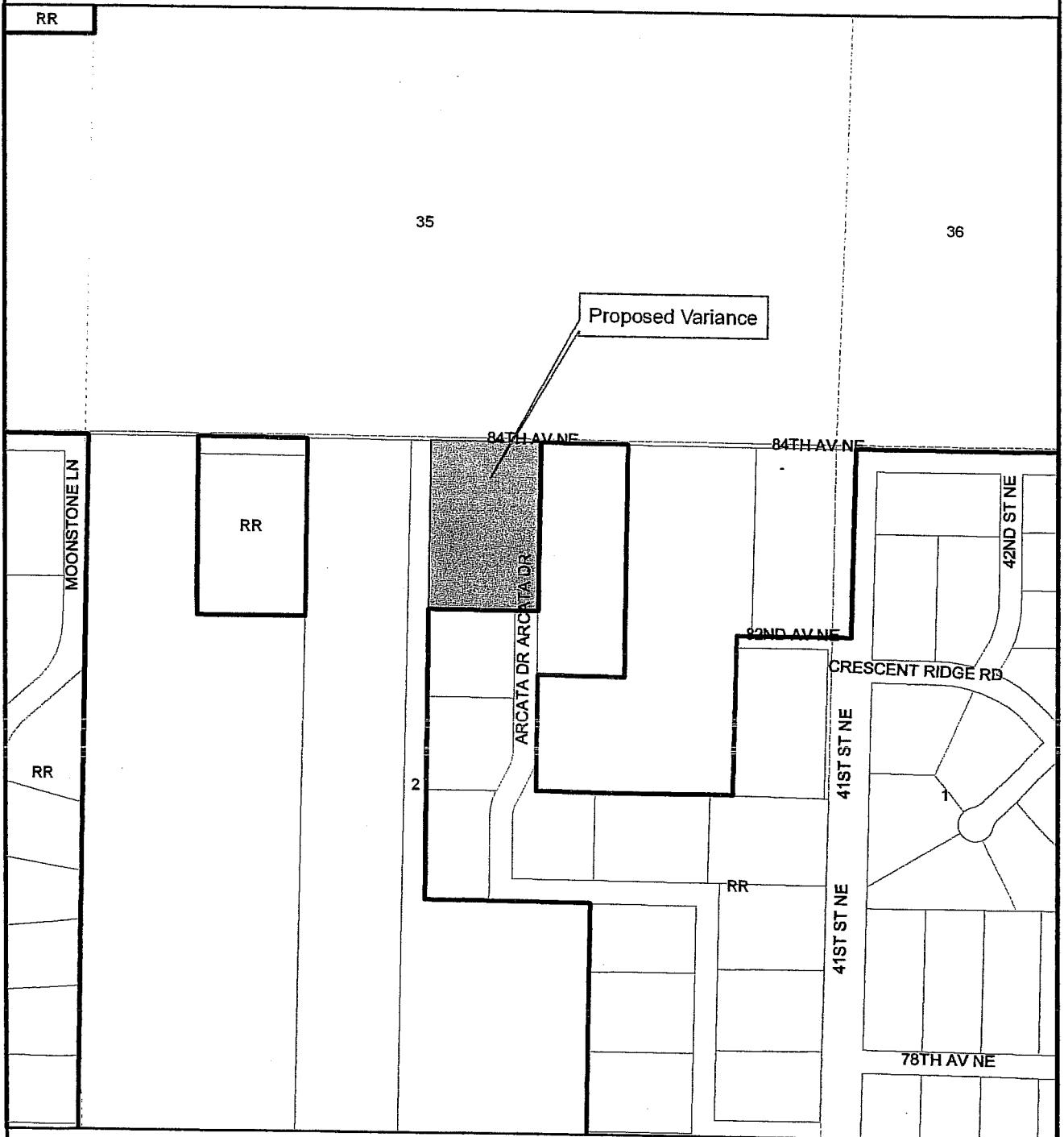
Of the three conditions listed above, the only one that is not met is #1 which would be satisfied by a rezoning to RR as mentioned earlier.

In regards to the upcoming meeting, until two new members are installed, a concurring vote of all four members is required to approve any variance in accordance with Section 14-06-03(2). Appeal Procedure as follows:

The concurring vote of four members of the board shall be necessary to reverse an order, requirement, decision or determination of the Building Official or other official, or to decide in favor of the applicant any matter upon which it is required to pass under this article.

Bismarck-Burleigh County Community Development Department
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Proposed Variance
Lot A, Section 2, Township 139N, Range 80W
8200 Arcata Drive



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: April 28, 2010 (klr)

Source: City of Bismarck



1:50000

275796

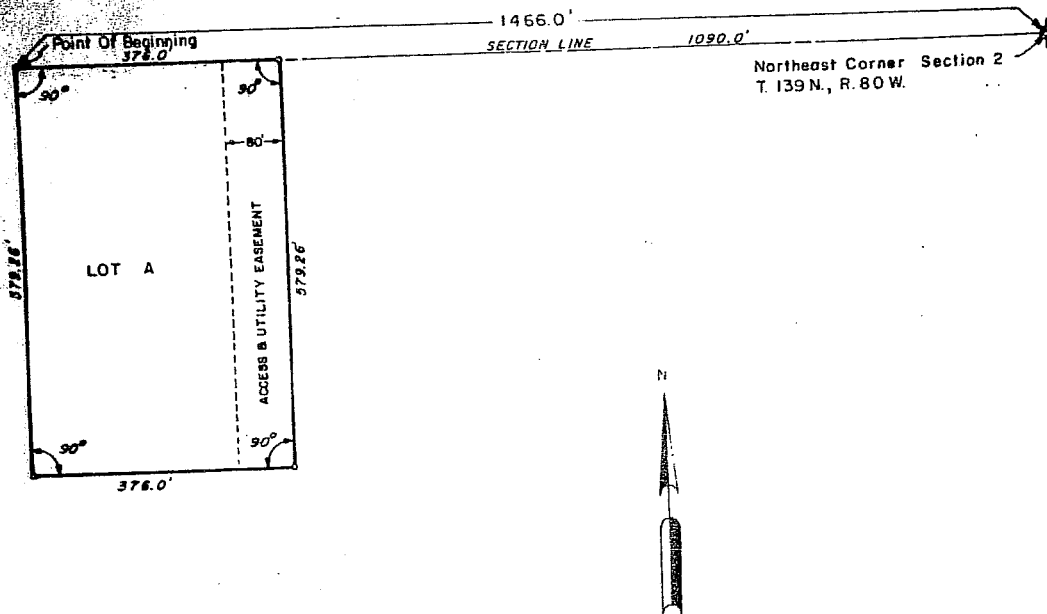
31-00-12-20

PLAT OF IRREGULAR DESCRIPTION (Sec. 37-02-19-N. D. C.)

PLAT OF

LOT A, NE 1/4 Section 2 Township 139 N. Range 80 W.

Present Owner Larry A. Wegerle & Carolyn L. Wegerle



SCALE 1" = 200'

DATE JANUARY 18, 1977

Description

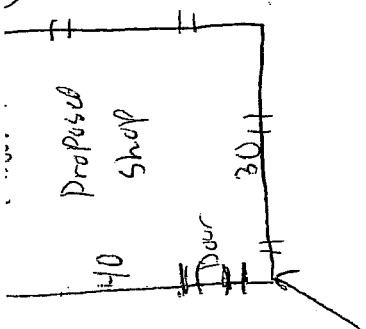
Lot Number A () of NE 1/4 Section 2 Township 139 N. Range 80 W.

described as follows: All that part of the northeast quarter (NE 1/4) of section two (2), township one hundred thirty-nine north (T. 139 N.), range eighty west (R. 80 W.) of the fifth principal meridian (5th P.M.) Burleigh County, North Dakota that lies within and is bounded by the following described traverse:

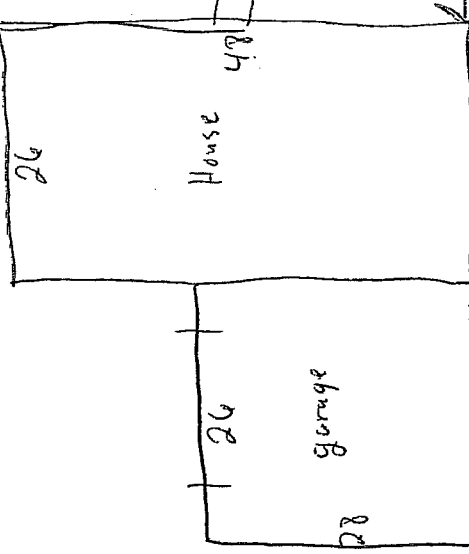
Beginning at a point which lies on the north line of said section two (2) said point being one thousand four hundred sixty-six (1466.00) feet west of the northeast corner of said section two (2); thence bearing south perpendicular to said north section line a distance of five hundred seventy-nine and twenty-six hundredths (579.26) feet; thence bearing east parallel to said north section line a distance of three hundred seventy-six (376.0) feet; thence bearing north perpendicular to said north section line a distance of five hundred seventy-nine and twenty-six hundredths (579.26) feet to said north section line; thence bearing west along said north section line a distance of three hundred seventy-six (376.00) feet to the point of beginning.

The above described tract of land contains five (5.00) acres, more or less.

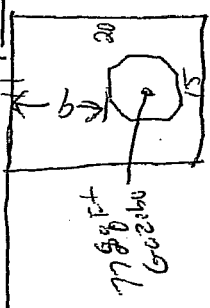
64 ft to Center line of Arcata Drive



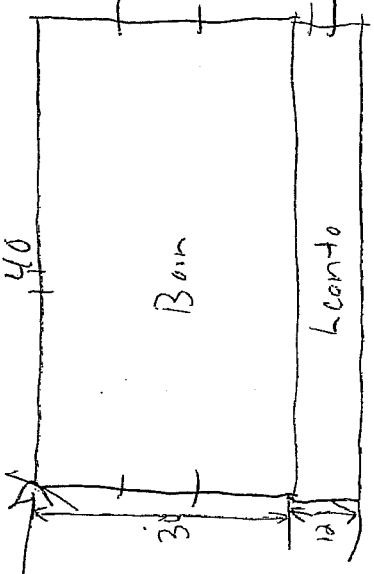
25 ft



150



32

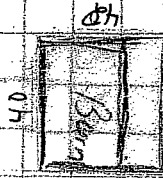
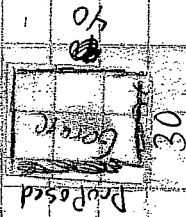


S

1 square = 14 ft. approx. 196 sq. ft. approx

565

Arctic Division



all Hise removed

Shed

Garage

375 ft. 282 ft.

**CITY OF BISMARCK/ETA & BURLEIGH COUNTY
APPLICATION FOR APPROVAL OF A VARIANCE
WRITTEN STATEMENT**

RECEIVED

APR 16 2010

1. Property Address or Legal Description: 8200 Arcata Dr Bismarck 58503
2. Location of Property: ☐ City of Bismarck ☐ ETA ☒ Burleigh County
3. Type of Variance Requested: Increase of Square footage allotment for accessory building
4. Applicable Zoning Ordinance Chapter/Section: Accessory Building within ETA and Burleigh County
Zoned as Ag. Right now

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features – such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition – that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

The maximum Sq. Footage For our 5 Acre Lot is 2,178 and
Because The Barn on our Property is 1,620 Sq. Ft. The ordinance
Only allows 498 Sq. Ft. left to use. The building we ~~wanted~~
want is 1200 Sq. Ft.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

We cannot add onto our Attached garage Because of the
Septic System Being to the north of the Driveway and garage.
We cannot Purchase Adjoining Land Because of Road ways.
We would Use the Detached garage For storage of our tractor and
other Equipment used to maintain our Property and Remove snow.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

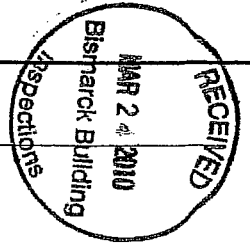
The building size is going to allow us to store our Equipment
inside instead of leaving it out ~~in~~ in the weather, any smaller
and I cannot get it all in. ~~the~~

Bismarck

CITY OF BISMARCK
BUILDING DIVISION
221 N 5TH ST
BISMARCK, ND 58506-5503
PH (701) 355-1465

CITY OF BISMARCK / ETA & BURLEIGH COUNTY

RECEIVED DATE:



CONTACT INFORMATION:

1. Name: Christopher And Roberta Hambrick

2. Phone Number: 701-667-6258

3. Property Address: 8200 Arcata Drive

4. Location of Property: ☐ City of Bismarck☒ ETA☒ Burleigh Country

5 Reason for variance

We would like to build a 1,200 sq ft shop to consolidate our buildings & neaten the appearance of our property. We have a 1,680 sq ft barn with lean to for our horses. We have three small outbuildings totaling 327 sq ft, which would be taken down once the shop was built. The property is not platted at this time and we would like to put up the shop without platting due to cost.

6. In the space below, please draw your lot, all existing buildings located on your lot and the proposed structure. Include dimensions of buildings, distance between buildings and your property lines.

On next page

7. Your application has been reviewed. It has been:

☐ Approved

Reviewed By:

Ray Lin

☒ Denied

Date:

4-8-10

8. Reason for denial:

The 1200 sqft. shop would exceed
the allowable coverage

Shop 1,200

Barn 1,680

2,880

1% of 5 Acres =

2,178

(-702) over the allowable

Please make the corrections and resubmit the application

Please note that an application for a permit is deemed to be abandoned 180 days after the date of filing, unless the application has been pursued in good faith or a permit has been issued. Therefore, supply us with the required plans at your earliest convenience.

3/24/10

Per County Auditing

- Owners purchased in 2005

- Auditing/assessing last out there in 2007 at that time the
12x12 shed was not there

- the 12x40 lean-to on the 30x40 metal bldg (barn) is
completely enclosed

- the 77 sf 'gazebo' is completely enclosed (built in 1990)

Lot is 5 acres